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April 30, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

RE: CC Docket No. 95-116, Petition for Waiver of June 30, 1998 Local Number
Portability Date

Dear Ms. Salas:

Enclosed is the petition of Rio Virgin Telephone Company (hereafter Rio Virgin) hereby requesting a four month temporary waiver (until October 31, 1998) of the June 30, 1998 requirement that it provide local number portability (LNP) in its Mesquite, Nevada switching complex.

An original and four copies are being filed. Please return the stamp copy in the SASE.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Brenda Crosby".

Brenda Crosby
Attachments

cc:
Ms. Marian R. Gordon
Special Counsel, Network Services Division
Federal Communications Commission
2025 M Street, NW
Washington, DC 20554

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Rio Virgin Local Number Portability Waiver
April 30, 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of
the Petition of Rio Virgin
Telephone Company Request for
Waiver of Local Number Portability
Implementation Deadline

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CC Docket No. 95-116

PETITION OF RIO VIRGIN TELEPHONE COMPANY (Rio Virgin)
FOR WAIVER OF ITS JUNE 30, 1998 IMPLEMENTATION
DATE FOR LOCAL NUMBER PORTABILITY

Rio Virgin Telephone Company
P.O. Box 189
Estacada, Oregon 97023

Date Submitted: April 30, 1998

Rio Virgin Local Number Portability Waiver
April 30, 1998

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ATTACHMENTS

- 1 - Nortel Correspondence dated December 16, 1997
- 2 - Timeline for LNP Implementation

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PETITION OF RIO VIRGIN TELEPHONE COMPANY (Rio Virgin)
FOR WAIVER OF ITS JUNE 30, 1998 IMPLEMENTATION
DATE FOR LOCAL NUMBER PORTABILITY

I. Introduction

Rio Virgin Telephone Company (hereafter Rio Virgin) hereby requests a four month temporary waiver (until October 31, 1998) of the June 30, 1998 requirement that it provide local number portability¹ (LNP) in its Mesquite, Nevada switching complex.

In accordance with the phased national implementation schedule, Rio Virgin is faced with a second quarter 1998 implementation date for local number portability capabilities. To accomplish these tasks, Rio Virgin must complete an expensive upgrade of its switching facilities in Mesquite, Nevada. Rio Virgin has been informed by its switching vendor Nortel that the complexity of the upgrade creates an estimated completion date of the fourth quarter of 1998.

¹ Per 47 U.S.C. at § 153(30): The ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

The purpose of the instant petition is to demonstrate that the granting by this Commission of the minor implementation extension is in the public interest.

Section 1.3 of the Federal Communications Commission's rules permits (the Commission) to authorize a waiver of its rules "if good cause is therefore shown."² A waiver of the Federal Communications Commission's rules is appropriate if special circumstances warrant a deviation from the general rule³ and such a deviation will serve the public interest.

In the First Report and Order in this proceeding⁴, the Commission, at paragraph 85, delegates: *"to the Chief, Common Carrier Bureau, the authority to waive or stay any of the dates in the implementation schedule, as the Chief determines is necessary to ensure the efficient development of number portability, for a period not to exceed 9 months...In the event a carrier is unable to meet our deadlines for implementing a long-term number portability method, it may file with the Commission, at least 60 days in advance of the deadline, a petition to extend the time by which implementation in its network will be completed."*

The First Report and Order further details what these requests must include:

"Such requests must set forth: (1) the facts that demonstrate why the carrier is unable to meet our deployment schedule; (2) a detailed explanation of the activities that the carrier has undertaken to meet the implementation schedule prior to requesting an extension of time; (3) an identification of the particular switches for which the extension is requested; (4) the time within which the carrier will complete deployment in the affected switches; and (5) a proposed schedule with milestones for meeting the deployment date."

Rio Virgin will demonstrate that a waiver of the June 30, 1998 timing requirement for local number portability is necessary, appropriate, and in the public interest as Rio's switching vendor is unable to meet earlier than a fourth quarter 1998 implementation date.

² 47 C.F.R. § 1.3

³ Northeast Cellular Tel. Co. v. FCC, 897 F.2nd 1164, 1166 (D.C. Cir. 1990), WAIT Radio v. FCC, 418 F. 2nd 1153 (D.C. Cir. 1969).

⁴ First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, released June 27, 1996 (hereafter "First Report and Order").

II. Background

Rio Virgin serves one exchange in Nevada, Mesquite, and a remote in Littlefield, Arizona, which provides service to approximately 5,600 access lines. The exchanges are currently served by a Nortel DMS-10 that was installed in 1987. This switch does not accommodate the changes necessitated by local number portability within the context of Rio Virgin's overall network upgrade parameters. Rio Virgin has experienced, and continues to experience, phenomenal access line growth. For example, between June of 1995 and June of 1997, Rio Virgin achieved a 65% growth in access lines, increasing from 3,173 to 5,235 access lines. This growth continues, as the access line count in November, 1997 was 5,604. This has necessitated \$4.5 million of additional network investment in 1996-7.

Thus, in order to comply with both the LNP implementation and meet its network objectives in an economic manner, Rio Virgin must replace its current DMS-10 switch with a DMS-100 configuration to accommodate the realized and anticipated access line growth. This replacement was initially planned for the start of 2Q 1998. Due to circumstances beyond Rio Virgin's control, Nortel will not be able to meet this date. Rio Virgin is faced with several alternatives with respect to this delay.

First, Rio Virgin is eligible under Section 251(f)(2)⁵ to petition the Public Utilities Commission of Nevada for suspension or modification of the requirements of Section 251(b). The Nevada Commission would be required to act on the petition within 180

⁵ A LEC with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide is eligible to petition the appropriate state commission for relief.

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days, during which time this Commission could suspend the petition of the deployment deadline for Rio Virgin while it is considering the petition for suspension or modification of these Section 251(b) obligations. We do not choose this course of action at the present time.

Instead, we apply under this instant petition for an extension of the LNP deadline until October 31, 1998, on the basis of the extraordinary circumstances beyond our control that prevent Rio Virgin from complying with the phased deployment schedule. In Attachment 1, we have included some of our correspondence with Nortel.

As noted in this December 16 letter, Nortel itself states: "...the Mesquite Host-Remote DMS-10 to DMS-100 Network conversion will be an extremely complex project." In detailing the reasons for this complexity, Nortel's Mr. Shaver explains that: "Changes to the dialing plan, equipment staging and installation in a working environment, and telco/vendor coordination **indicate that an expanded schedule will be necessary to minimize service degrades.**" (emphasis added).

Nortel informed Rio Virgin in this same letter that: "Considering the overall scope of the Mesquite Network Upgrade, Nortel anticipates that Local Number Portability datafill and testing could be done during 4Q98 with completion by year end." Rio Virgin demonstrates with this request that discussions to date with Nortel have advanced the proposed completion date forward 60 days to an October 31, 1998 date. Nonetheless, Rio Virgin also recognizes that it is neither Nortel's largest customer nor is the Mesquite service area the hotbed of competitive activity in the western United States. These factors also impact the anticipated completion date.

To summarize, Rio Virgin anticipates completing the installation of its new DMS-100 with LNP capability before the end of the fourth quarter 1998. Rio Virgin has received assurances from Nortel that LNP testing will be completed in order for Rio Virgin to meet a year end 1998 target date. Based on the aforementioned information, Rio Virgin respectfully requests a waiver of LNP implementation until October 31, 1998.

III. A Waiver of the Prescribed Timeline is Necessary and in the Public Interest

In the discussion below, Rio Virgin demonstrates that it faces extraordinary circumstances related to implementing local number portability. In the Commission's recent *Fourth Order on Reconsideration* in CC Docket No. 96-45, the Commission states⁶ that "*exceptional circumstances exist if individualized hardship or inequity warrants a grant of additional time to comply ... and that a grant of additional time to comply with these requirements would better serve the public interest than strict adherence to the general requirement...*" Absent the granting of an additional four months to implement LNP, Rio Virgin is in the difficult predicament of having to meet a regulatory deadline when the product that it needs to meet the deadline is effectively unavailable because its equipment vendor is unable to deliver and install the equipment by the June 30, 1998 deadline.

Rio Virgin has Been Diligent in its Switching Upgrades

Rio Virgin invested in digital switching technology in 1987, bringing the benefits of digital technology to its rural customers. These investments were made before switch manufacturers made LNP capabilities available. However, due to the schedule of its

⁶ Fourth Order on Reconsideration in CC Docket No. 96-45, released December 30, 1997, @ paragraph 12 and footnote 30.

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switching vendor, Rio Virgin now finds itself in the position of not being able to completely comply with the phased deployment of local number portability on or before June 30, 1998. Rio Virgin placed its order for the needed switching upgrade in a timely manner, as reflected in the timeline included in this petition as Exhibit 2.

Rio Virgin is not seeking to avoid the implementation of LNP, but simply needs additional time due to where it is prioritized in Nortel's schedule. It is worth noting for the record that Rio Virgin is faced with a sizable expenditures of funds for the purpose of complying with the LNP requirement.

Rio Virgin Customers will Experience Service Degradation Absent Granting the Waiver

As noted in this December 16 letter, Nortel itself states: "...the Mesquite Host-Remote DMS-10 to DMS-100 Network conversion will be an extremely complex project." In detailing the reasons for this complexity, Nortel's Mr. Shaver explains that: "Changes to the dialing plan, equipment staging and installation in a working environment, and telco/vendor coordination **indicate that an expanded schedule will be necessary to minimize service degrades.**" (emphasis added).

Rio Virgin submits that it is of paramount importance that customers not experience service degradation in an attempt to meet a target date for LNP implementation when, with another 120 days, the transition would be smooth and seamless to the DMS-100 environment. We submit for the record that unnecessary inconvenience to subscribers in the form of service degradation is certainly not the intent of implementing the tenets of the pro-competitive Telecommunications Act of 1996. This

Commission has subscribed to the same view. In the First Report and Order⁷, in enumerating its minimum performance criteria for long-term number portability methods, the Commission discusses the fifth criteria in paragraph 55:

55. Fifth, as a general matter, we require that the implementation of any long-term method not unreasonably degrade existing service quality or network reliability. Consumers, both business and residential, rely on the public switched telephone network for their livelihood, health, and safety. Jeopardizing the reliability of the network would stifle business growth and economic development, and endanger individuals' personal safety and convenience. Consumers, both business and residential, have also come to expect a certain level of quality and convenience in using basic telecommunications services. We note that this Commission has repeatedly affirmed its commitment to maintaining service quality and network reliability. [footnote 162 references six separate prior proceedings] We, therefore, require that any long-term method of providing number portability not cause any unreasonable degradation to the network or the quality of existing services. This requirement extends to degradation that affects carriers operating, and end users obtaining services, outside as well as within the area of portability.

The benefit of the four month delay outweighs the burden of the minor extension on any affected party in the Rio Virgin service area.

Rio Virgin Has Implemented a Rigorous Implementation Schedule

Rio Virgin is working with Nortel to comply with the LNP requirement in order to fully meet the LNP requirement by no later than October 31, 1998. In view of the relatively small number of subscribers that will be delayed in achieving LNP, failing to grant a waiver request would not benefit the public. Rio Virgin is moving forward to implement the LNP requirements as quickly as is feasible with the vendor's schedule (see Attachment 2). Rio Virgin therefore requests that it be granted the additional four months in order to fully comply with the LNP timing requirements.

⁷ First Report & Order, 11 FCC Rcd at 8378.

The FCC has established a precedent of granting additional time in related matters

In a number of prior decisions, the Commission has granted extensions of time to local exchange carriers when circumstances warrant such an extension. In this Local Number Portability docket⁸, the Commission has committed to reducing regulatory burdens on small telephone companies.

In this Rio Virgin petition, such an extension is warranted and consistent with Commission precedent recognizing the technical and economic burdens imposed on small and rural LECs in implementing software upgrades. In earlier situations⁹, the Commission has granted waivers when such burdens have been demonstrated, as Rio Virgin has done here in this instant petition.

Additionally, in other Commission matters¹⁰, the Commission has committed to reducing regulatory burdens on small telephone companies. Granting this waiver request for Rio Virgin is consistent with this objective.

IV. Conclusion

As demonstrated above, grant of the instant petition will serve the public interest and will allow Rio Virgin to complete its switch replacement in a manner that prevents service degradation to customers.

⁸ Telephone Number Portability, Second Report and Order, CC Docket No. 95-116; FCC 97-289 (rel. Aug. 18, 1997).

⁹ E.G., Rules and Policies Regarding Calling Number Identification Service - Caller ID, Order and Fourth Notice of Proposed Rulemaking, CC Docket No. 91-281, 10 FCC Rcd 13796, 13808 (1995) (Caller ID Order).

¹⁰ Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, Implementation of Section 601(d) of the Telecommunications Act of 1996, WT Docket No. 96-162, FCC 97-352 (rel. Oct. 3, 1997)

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Rio Virgin has been diligent in its switch upgrade program, having provided digital technology to its customers for the last decade. Due to availability from Nortel due to its backlog of work, Rio Virgin will be delayed in replacing its DMS-10 switch. Rio Virgin is now scheduled to have completed the installation of a DMS-100 by the end of October, 1998.


Rio Virgin submits that the public interest will be better served by a waiver of the June 30, 1998 date and that grant of this petition would be consistent with the policies underlying these rules. Rio Virgin has demonstrated its diligence in upgrading its switches; shown that the availability from Nortel of the DMS-100 product required to accomplish the upgrade is 4Q 1998, and that there is a de minimis impact of an extension of the deadline on customers that does not outweigh the burden that would be imposed on Rio Virgin by a denial of the extension request.

Good cause having been shown, Rio Virgin requests that the Commission act upon and grant the foregoing petition and:

- (1) Grant Rio Virgin a four month extension for LNP implementation from the June 30 date, until October 31, 1998; and
- (2) Grant such other and further relief as may be proper in the premises.

Respectfully submitted this April 30, 1998.

RIO VIRGIN TELEPHONE COMPANY

by 
Brenda Crosby, its General Manager

NORTEL

NORTHERN TELECOM

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December 16, 1997

Mr. Robert Milliken
Cascade Utilities Inc.
303 S.W. Zobrist St.
Estacada, Oregon 97023

Subject: Mesquite, Nevada DMS-10/100 Conversion, LNP Implementation

Dear Bob:

This correspondence is provided as a follow up to our conversation regarding the Mesquite, Nevada Network Upgrade and associated implementation schedules.

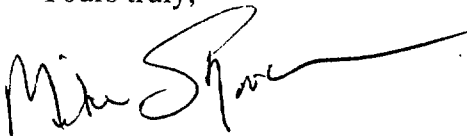
As we discussed, the Mesquite Host-Remote DMS-10 to DMS-100 Network conversion will be an extremely complex project. Changes to the dialing plan, equipment staging and installation in a working environment, and telco/vendor coordination indicate that an expanded schedule will be necessary to minimize service degrades.

Considering the overall scope of the Mesquite Network Upgrade, Nortel anticipates that Local Number Portability datafill and testing could be done during 4Q98 with completion by year end.

Please call with any questions or comments.

Thank you for your use of Northern Telecom products and services.

Yours truly,



Mike Shaver
Senior Sales Executive
Northern Telecom
Pacific Region

Rio Virgin LNP Waiver
Exhibit 2 - Timeline for LNP Implementation

11/5/97	Purchase Order for new switch
1/12/98	Customer Information meeting with vendor
3/23/98	Delivery of switch to Mesquite, Nevada
3/30/98	Installation commences
7/27/98	Projected completion of vendor activity
10/31/98	Projected cutover date